STATE OF MICHIGAN

COURT OF APPEALS

STELLA SIDUN, Plaintiff-Appellant,	UNPUBLISHED August 15, 2006
v	No. 264581 Ingham Circuit Court
WAYNE COUNTY TREASURER, Defendant-Appellee .	LC No. 04-000240-MT ON REMAND

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

In *Sidun v Wayne Co Treasurer*, unpublished opinion per curiam of the Court of Appeals, decided January 19, 2006, we affirmed the trial court's order granting summary disposition in favor of defendant. Our Supreme Court vacated our opinion and remanded for reconsideration in light of *Jones v Flowers*, 547 US ___; 126 S Ct 1708; 164 L Ed 2d 415 (2006). Upon reconsideration, we adopt our prior holding. To reiterate our previous opinion:

> Plaintiff's mother, Helen Krist, owned real property known as 2691 Commor in Hamtramck. On November 9, 1979, Krist conveyed the property by quitclaim deed to herself and plaintiff as joint tenants with rights of survivorship. The deed listed Krist's address as 3233 Stolzenfeld in Warren and listed plaintiff's address as 2681 Dorchester in Birmingham. The Wayne County Register of Deeds recorded the deed on November 14, 1979. Since the conveyance the property has been used as rental property. The Hamtramck city assessor recorded Krist as the taxpayer for the property and listed 3233 Stolzenfeld as her current address. In late 1999 or early 2000, Krist moved from 3233 Stolzenfeld address to reside with plaintiff at 2681 Dorchester. Neither Krist nor plaintiff notified defendant or the Hamtramck city assessor of Krist's change of address. Tax bills were mailed to Krist as taxpayer of record at 3233 Stolzenfeld. Krist failed to pay the county property taxes for the Hamtramck property for tax years 2000 and 2001. Tax delinquency notices were sent to Krist at the Stolzenfeld address.
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> On June 14, 2002, defendant filed a petition under the GPTA to foreclose on the Hamtramck property. Notices of show cause and judicial foreclosure hearings were sent to plaintiff and Krist at the Stolzenfeld address. A Wayne County representative visited the property and posted notice of both hearings at

the property. Defendant sent notice to the rental occupants of the property. Defendant also published notification in the Michigan Citizen, a local circulating newspaper, three times.[1]

[1]Throughout the notification process, plaintiff's husband visited the property and collected rent from the property's tenants.

Krist passed away on January 1, 2003, leaving plaintiff sole owner of the Hamtramck property. In January and February 2003, show cause and judicial foreclosure hearings were held. On March 10, 2003, the court entered a judgment of foreclosure in favor of defendant. Redemption rights to the property expired twenty-one days later.

The central issue of this appeal is whether defendant provided sufficient notice of the tax delinquency and subsequent foreclosure proceedings on the Hamtramck property. Plaintiff contends that the trial court erred in deciding that defendant gave sufficient notice under the GPTA and the due process clause of the Michigan Constitution, Const 1963, art 1, § 17.

We review de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen'l Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding such a motion, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley, supra* at 278.

Under the GPTA, county treasurers are authorized to seize tax-delinquent property and sell it at auction to satisfy delinquent taxes. *Republic Bank v Genesee County Treasurer*, 471 Mich 732, 737; 690 NW2d 917 (2005). Following our Supreme Court's decision in *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976), the Legislature added additional notice provisions to the GPTA to satisfy the requirements set forth in *Dow*. *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 428-429; 617 NW2d 536 (2000). As now constructed, the GPTA includes an extensive set of procedures for notice in the tax sale process. *Id.* at 428. However, as the Legislature clearly spelled out in the GPTA, whether notice is adequate is governed by state and federal due process standards and not by specific provisions of the act. *Republic Bank, supra*, 471 Mich at 737, citing MCL 211.78(2). Specifically, MCL 211.78(2) provides as follows:

"It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States. The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated."

Due process protects a real estate owner's interest in property, *Dow v Michigan*, 396 Mich 192, 204; 240 NW2d 450 (1976), and requires that an owner in property be given proper notice and an opportunity to contest a state's claim to take the property for the owner's failure to pay taxes, *id.* at 196. Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 206 (citation omitted). Mailed notice is adequate. *Id.* at 211.

"Mailing should be by registered or certified mail, return receipt requested, both because of the greater care in delivery and because of the record of mailing and receipt or non-receipt provided. Such would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period. [*Id.*]."

As generally provided in the GPTA, mailed notice is to be sent to the owner's last known address. *Smith, supra* at 429. But if a mailing is returned by the post office as undeliverable, the state is not obligated to investigate to determine if a current address can be located. *Id.* In addition, upon failure to pay property taxes, the act provides for delinquency notices to be sent on June 1 and September 1 as follows:

"[B]y first-class mail, address correction requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent or to the person identified as the owner of property returned for delinquent taxes, to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax certificate for property returned for delinquent taxes was issued pursuant to section 71, as shown on the current records of the county treasurer . . . . [MCL 211.78b; MCL 211.78c.]"

Further, the GPTA provides that on February 1, notice must be sent by certified mail. MCL 211.78f(1). Additionally, MCL 211.78f(3) provides that a county treasurer may also publish notice in a newspaper circulated in the county, if there is one.

Following the notices of delinquency, defendant filed a petition to foreclose on the property. Under MCL 211.78i(1), once a property has been forfeited to the county treasurer under § 78g, the foreclosing governmental unit is required to initiate a title search to identify property owners entitled to notice of the subsequent show cause hearing under § 78j and the foreclosure hearing under § 78k. Subsection 78i(6) provides as follows:

"The owner of a property interest is entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k if that owner's interest was identifiable by reference to any of the following sources before the date that the county treasurer records the certificate required under section 78g(2):

(a) Land title records in the office of the county register of deeds.

(b) Tax records in the office of the county treasurer.

(c) Tax records in the office of the local assessor.

(d) Tax records in the office of the local treasurer."

In addition, a representative of the foreclosing governmental unit is required to visit the forfeited property to determine if the property is occupied. MCL 211.78i(3). If the property appears to be occupied, the representative must attempt to personally serve the occupant. MCL 211.78i(3)(a). If unsuccessful, the representative must place notice in a conspicuous manner on the property. MCL 211.78i(3)(d). The notice provisions in § 78i are designed to ensure that parties in interest are aware of the foreclosure proceedings so that they may exercise their redemption rights. *In re Wayne Co Treasurer*, 265 Mich App 285, 292-293; 698 NW2d 879 (2005). And while the GPTA requires the relevant party to take numerous steps to provide notice, subsection 78i(2) notes in language that tracks subsection 78(2) that

"[t]he failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States."

In this case, plaintiff primarily argues MCL 211.78i(1) required defendant to search the county register of deeds and to provide notice to her at the address provided for her on the quitclaim deed. She maintains that defendant's failure to do so deprived her of notice reasonably calculated to apprise her of the pending foreclosure. But whether notice is adequate is governed by state and federal due process standards and not by specific provisions of the GPTA. *Republic Bank, supra* at 737; MCL 211.78(2). Defendant sent notice to the taxpayer's address as recorded with the Hamtramck city assessor, and defendant's representative visited the Hamtramck property before the show cause and foreclosure hearings and

> conspicuously posted notice of the upcoming hearings. Due process only requires notice that is reasonably calculated to apprise the interested party of notice of the pending proceedings. *Republic Bank, supra* at 739. Here, where plaintiff and her husband rented out the Hamtramck property on a month-to-month basis and visited the property to collect rent, placing notice on the Hamtramck property itself was reasonably calculated to apprise plaintiff of the pending proceedings. The minimal requirements of due process were satisfied and plaintiff is not entitled to monetary damages.

After reviewing our Supreme Court's decision in *Jones, supra*, we find no reason to change our previous opinion. In *Jones*, the petitioner continued to pay the mortgage on what had been his marital home after separating from his wife and living elsewhere in the same city. The mortgagee paid the property taxes during the life of the mortgage. After the mortgage was paid off, the taxes went unpaid, and the subject property was certified as delinquent. The Commissioner of State Lands mailed the petitioner a letter stating that if he did not redeem the property it would be subject to sale two years hence. The letter was sent, certified mail, to the subject property's address, but was returned as unclaimed. Two years later, the Commissioner published notice of public sale in a local newspaper. No bids ensued, however. After the Commissioner mailed another certified letter to the petitioner, which again went unclaimed, the state sold the property to the respondent. The issue presented in *Jones* was "whether the Due Process Clause requires the government to take additional reasonable steps to notify a property owner when notice of a tax sale is returned undelivered." The Supreme court opined that it does if "there are any such available steps," and "if practicable to do so." 126 S Ct at 1718.

The *Jones* Court held that where notice is due, the "'means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.'" *Id.* at 1715, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 315; 70 S Ct 652; 94 L Ed 865 (1950). Accord, *Sidun, supra*, slip op at 3, citing *Dow, supra* at 211. The Court concluded in *Jones* that two unsuccessful attempts at certified mail plus publication was not sufficient in this instance because "additional reasonable steps were available to the State." *Id.* at 1713. The Court declined to specify precise steps that Arkansas had to take to satisfy due process requirements. 126 S Ct at 1718, 1721. But the Court did suggest that several reasonable steps the state could have taken in *Jones* included resending the notice by regular mail so that a signature was not required, posting notice on the front door, or addressing the otherwise undeliverable mail to "occupant." 126 S Ct at 1719.

Here, defendant mailed notices to plaintiff's mother's address of record, published notice on three occasions, and also resorted to posting notice on the property. *Jones* reiterated that the government need not achieve *actual* notice, but must provide notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 126 S Ct at 1713-1714 (emphasis added). *Jones* additionally reiterated that where mailed notice is returned undelivered, the government need not consult other government records, or a local phonebook, to try to find a better address. 126 S Ct at 1719. We acknowledged these rules in reaching our original conclusion. And *Jones* expressly recognized the validity of posting notice on the subject property as "a reasonable followup measure" when mailed notice is returned unclaimed. Defendant's effort to notify plaintiff of an impending tax sale of her property, particularly the posting of the notice on the

property itself, given that plaintiff's husband routinely visited the property to collect monthly rents, was sufficient to satisfy due process given the circumstances of this case.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald